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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
SRC 07 062 52377

Office: TEXAS SERVICE CENTER

Date: NOV 27 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to provide engineering design services. It seeks to permanently employ the beneficiary in the United States as a design engineer. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ As required by 8 C.F.R. § 204.5(k)(4), the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

As set forth in the director's March 1, 2007 denial, the primary issue in this case is whether the beneficiary's *diploma de licenta* from Transilvania University of Braşov, Romania is the foreign equivalent of a U.S. master's degree in mechanical engineering.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); *see also Janka v. U.S. Dept. of Transp.*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g. Dor v. INS*, 891 F.2d at 1002 n. 9. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

The priority date of instant petition is December 4, 2006, the date the labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). On the petition, the petitioner claimed to have been established in 1946, to have a gross annual income of over \$100 million, and to employ 541 workers. The proffered wage stated on the labor certification is \$72,000.00 per year.

Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United

¹There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

²The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). Except as explained in footnote 5, *supra*, the record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

States.³ In order to classify the beneficiary in this employment-based preference category, the petitioner must establish that: the labor certification requires an advanced degree professional;⁴ the beneficiary is an advanced degree professional;⁵ and the beneficiary meets the requirements of the job offered as set forth in the labor certification.⁶ The petitioner must also establish that it has the continuing ability to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence.⁷

The issue of whether the beneficiary's *diploma de licenta* is the equivalent of a U.S. master's degree is relevant to whether the beneficiary meets the requirements of the offered position, and to whether the beneficiary is an advanced degree professional.⁸

It is important to note that the DOL's role in the employment-based immigrant visa process is limited to determining whether there are sufficient U.S. workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of similarly employed U.S. workers. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a). It is significant that none of the responsibilities assigned to DOL, nor the remaining regulations implementing these duties at 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or the job offered. Instead, the authority to make this determination rests solely with U.S. Citizenship and Immigration Services (USCIS). See *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983); *Tongatapu Woodcraft*

³The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." The regulation further states that a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.*

⁴8 C.F.R. § 204.5(k)(4).

⁵8 C.F.R. § 204.5(k)(3).

⁶8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

⁷8 C.F.R. § 204.5(g)(2).

⁸The stated basis of the denial is that the beneficiary did not meet the definition of an advanced degree professional set forth at 8 C.F.R. § 204.5(k)(3). The AAO will also consider whether the petitioner has established that the beneficiary is qualified to perform the duties of the offered position. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983).

USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Iwine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st Cir. 1981). To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. at 159; *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

The minimum education, training, experience and skills required to perform the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the offered position of design engineer requires a master's degree in mechanical engineering or foreign equivalent, and 24 months experience in the job offered. The labor certification does not permit the beneficiary to qualify for the offered position with a bachelor's degree.

Initially, the petitioner submitted a copy of the beneficiary's *diploma de licenta* and transcript from Transilvania University of Braşov, Romania; a certified translation of the beneficiary's diploma and transcript, prepared by [REDACTED], dated October 3, 2000; and a foreign credential evaluation, prepared by [REDACTED] of Evaluation of Education International Inc., dated March 17, 2006.

In her translation, [REDACTED] translated the beneficiary's "*diploma de licenta*" as a "bachelor's degree diploma." However, [REDACTED] evaluation states that the beneficiary's *diploma de licenta* is equivalent to a master's degree in mechanical engineering from an accredited institution in the U.S.

Based in part on [REDACTED] translation, the director denied the petition, finding that the petitioner did not establish that the beneficiary possessed a master's degree in mechanical engineering or foreign educational equivalent.

On appeal, counsel provided a new certified translation of the beneficiary's diploma and transcript, prepared by [REDACTED] of Trustforte Language Services, dated March 16, 2007. [REDACTED] translates "*diploma de licenta*" as "licentiate degree." Counsel also provided a letter from [REDACTED], dated March 13, 2007, stating that the beneficiary completed a five-year, full-time course of study and confirming the prior evaluation that the beneficiary's *diploma de licenta* is the equivalent of a U.S. master's degree. The letter also states that [REDACTED] translation incorrectly translated "*diploma de licenta*" as "bachelor's degree diploma."

It is noted that [REDACTED] evaluation is a one-page document. No evidence was submitted of [REDACTED] credentials or expertise to provide an equivalency evaluation of foreign educational

credentials. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Given the inconsistency between [REDACTED] translation and [REDACTED] evaluation, and the lack of evidence establishing [REDACTED] qualifications to issue equivalency evaluations of foreign educational credentials, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries."⁹ Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO.¹⁰

Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.¹¹ If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council.¹²

In the section relating to the Romanian educational system, EDGE states that a *diploma de licență* is

⁹<http://www.aacrao.org/about> (accessed August 13, 2009) (copy incorporated into the record of proceeding).

¹⁰[REDACTED] of International Education Services, "AACRAO EDGE Login," <http://aacraoedge.aacrao.org> (accessed August 13, 2009) (copy incorporated into the record of proceeding).

¹¹"An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

¹²*Id.* at 11-12.

a postsecondary-level credential awarded upon completion of a four- to six-year program¹³ that "represents attainment of a level of education comparable to a bachelor's degree in the United States."¹⁴ Based on this juried opinion, we must conclude that the beneficiary's *diploma de licenta* is only equivalent to a bachelor's degree from an accredited institution in the United States.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Accordingly, on August 27, 2009, the AAO issued a notice of intent to deny (NOID) the petition, instructing the petitioner to provide evidence establishing that the beneficiary's *diploma de licenta* is the foreign equivalent of a U.S. master's degree in mechanical engineering within thirty (30) days of the NOID. *See* 8 C.F.R. § 103.2(b)(8). To date, the petitioner has not responded to the NOID.

Thus, the petitioner has not established that the beneficiary possesses the educational qualifications required to perform the proffered position.¹⁵ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the petitioner's failure to submit requested evidence that precludes a material line of inquiry is, by itself, grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). The AAO is unable to substantively adjudicate the appeal without a meaningful response to the line of inquiry set forth in the NOID.

Therefore, the appeal will be dismissed because the petitioner has not established that the beneficiary meets the educational requirements of the labor certification; the petitioner has not established that

¹³<http://aacraoedge.aacrao.org/credentials.php?countryId=175&page=1> (accessed July 22, 2009) (copy incorporated into the record of proceeding).

¹⁴<http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=175&credentialID=290> (accessed July 22, 2009) (copy incorporated into the record of proceeding).

¹⁵The petitioner also failed to establish that the beneficiary is an advanced degree professional. The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as an "academic or professional degree or a foreign equivalent degree above that of baccalaureate." A "baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." *Id.* The evidence in the record does not establish that the beneficiary has a degree above that of baccalaureate, or a bachelor's degree followed by at least five years of progressive experience in the specialty.

the beneficiary is a member of the professions holding an advanced degree; and the petitioner failed to submit requested evidence that precludes a material line of inquiry.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.